

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 6/30/2022
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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EMERY MUKENDI WAFWANA &	:
ASSOCIATES, P.C., and MOISE KAPANDA	:
MUKENDI, as Executor for the Estate of Emery	:
Mukendi Wafwana,	:
	:
	:
Plaintiffs,	:
	:
-against-	:
	:
DANIEL MENGARA, ELITE LAW FIRM, SCP,	:
and EUGENIE ELANGA MONKANGO,	:
Defendants,	:
	:
-and-	:
	:
EMERY MUKENDI WAFWANA & ASSOCIÉS,	:
SCP,	:
	:
Defendant Intervenor.	:
-----X	

20-CV-9788 (VEC)

ORDER ADOPTING  
REPORT &  
RECOMMENDATION

VALERIE CAPRONI, United States District Judge:

WHEREAS on January 5, 2021, the Undersigned referred this case to Magistrate Judge Parker for general pretrial and dispositive motions, including the preparation of reports and recommendations (“R&Rs”) on any dispositive motions, *see* Dkt. 21;

WHEREAS on September 24, 2021, Plaintiffs filed a Second Amended Complaint (“SAC”), *see* Dkt. 107;

WHEREAS Plaintiffs asserted causes of action under Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)), common law trademark infringement, and conversion against all Defendants; breach of care against Defendant Mengara; and tortious interference against Elite Law Firm and Monkango, *see id.*;

WHEREAS on October 28, 2021, Defendants Mengara and Wafwana & Associés moved to dismiss the SAC pursuant to Fed. R. Civ. P. 12(b)(1), (b)(2), and (b)(6), Dkt. 114, 117;

WHEREAS Defendants Elite Law Firm and Monkango have not been served with the SAC, *see* Dkt. 115;

WHEREAS on May 19, 2022, Judge Parker entered an R&R recommending that the Court grant Defendants' motion and dismiss the SAC in its entirety without prejudice, *see* Dkt. 124;

WHEREAS in the R&R, Judge Parker notified the parties that, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), they had fourteen days to file written objections to the R&R's findings, *id.* at 20;

WHEREAS Judge Parker further noted that failure to file objections would result in both the waiver of objections and the preclusion of appellate review, *id.*;

WHEREAS no party filed objections;

WHEREAS in reviewing an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge," 28 U.S.C. § 636(b)(1)(C);

WHEREAS when, as here, no party objects to the R&R, the Court may accept the R&R provided that "there is no clear error on the face of the record," *Heredia v. Doe*, 473 F. Supp. 2d 462, 463 (S.D.N.Y. 2007) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)); *see also* Fed. R. Civ. P. 72(b) advisory committee's note;

WHEREAS an error is clear when the reviewing court is left with a "definite and firm conviction that a mistake has been committed," *see Cosme v. Henderson*, 287 F.3d 152, 158 (2d Cir. 2002) (quoting *McAllister v. United States*, 348 U.S. 19, 20 (1954)); and

WHEREAS careful review of the R&R reveals that there is no clear error;

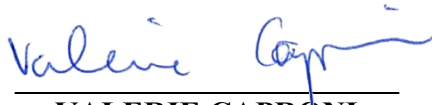
IT IS HEREBY ORDERED that the R&R is adopted in full, Defendant's motion to dismiss is granted, and this case is DISMISSED without prejudice.

Because the R&R gave the parties adequate warning, *see* Dkt.124 at 20, the failure to object to the R&R precludes appellate review of this decision, *see Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."). Because appellate review is precluded, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and, therefore, permission to proceed *in forma pauperis* for purposes of appeal is denied.

The Clerk of Court is respectfully directed to terminate the open motions at docket entries 114 and 117.

**SO ORDERED.**

**Date: June 30, 2022**  
**New York, New York**

  
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**VALERIE CAPRONI**  
**United States District Judge**